

Exhibit 6

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In Re:

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,
Debtor.

Adv.Pro.No.
08-01789 (BRL)

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IRVING H. PICARD, Trustee for the
Liquidation of Bernard L. Madoff
Investment Securities LLC,
Plaintiff,

Adv.Pro.No.
09-1182 (BRL)

v.

J. EZRA MERKIN, GABRIEL CAPITAL,
L.P., ARIEL FUND LTD., ASCOT
PARTNERS, L.P., GABRIEL CAPITAL
CORPORATION,

Defendants.

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Videotaped Deposition of TINA HYUNG SURH,
as taken by and before NANCY C. BENDISH, Certified
Court Reporter, RMR, CRR, RSA and Notary Public of
the States of New York and New Jersey, at the
offices of Scott & Scott, 405 Lexington Avenue, New
York, New York on Wednesday, September 18, 2013,
commencing at 10:10 a.m.

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question about your personal knowledge to say "you"
in my question, and if I'm asking about NYU's
knowledge, I'm going to specify NYU. Does that make
sense?

A. Yes.

Q. Okay. And if at any time you're
confused, please let me know.

A. Okay.

Q. I'll do my best to fix it.
Could you please state your full name
for the record.

A. Tina Hyung Surh.

Q. Can you briefly walk me through your
educational history.

A. I graduated from Tufts University in
1993 with a BA, and I graduated from Harvard
Business School in 1999 with an MBA.

Q. Any other degrees?

A. No.

Q. What is your current profession?

A. I am an investment manager for New
York University.

Q. Is that your title at New York
University?

A. Chief investment officer.

11

10:17:54 1 Q. How long have you held that title?

10:17:57 2 A. Since 2010.

10:18:01 3 Q. What was your title prior to 2010?

10:18:05 4 A. Acting chief investment officer.

10:18:06 5 Q. Also at NYU?

10:18:08 6 A. At NYU.

10:18:09 7 Q. When did you begin employment at NYU?

10:18:12 8 A. 2005.

10:18:13 9 Q. And what was your title at that time?

10:18:15 10 A. Director of investments.

10:18:17 11 Q. Have you held any additional titles

10:18:20 12 during your time at NYU?

10:18:22 13 A. No. Well, actually deputy chief

10:18:25 14 investment officer. So there's a progression.

10:18:29 15 Q. Understood.

10:18:29 16 And the approximate date range of the

10:18:32 17 time you held that title?

10:18:36 18 A. From March of 2005 through to

10:18:40 19 beginning '08, I was the director of investments,

10:18:43 20 then I was promoted to deputy CIO.

10:18:48 21 Q. Can you describe for me the extent to

10:18:54 22 which your roles and responsibilities at NYU may

10:18:57 23 have changed over time since you began employment.

10:19:01 24 A. Well, in my initial capacity I was a

10:19:05 25 member of the investment office staff responsible

10:36:33 1 Q. When you say "never been discussed,"
10:36:34 2 do you mean discussed with NYU?

10:36:38 3 A. Correct. Or rather, I should say
10:36:47 4 disclosed. Maybe that's a better -- a better -- you
10:36:49 5 know, a better term.

10:36:52 6 Q. Was -- is it your understanding that
10:36:54 7 that external money manager was Bernard Madoff?

10:36:58 8 A. It is now.

10:37:08 9 Q. Okay. Can you provide on behalf of
10:37:10 10 NYU the history of NYU's investment with Ariel?

10:37:15 11 MR. LAUGHLIN: Objection, vague,
10:37:17 12 but...

10:37:18 13 A. NYU invested with -- in the Ariel
10:37:22 14 Fund beginning in 1994 and made two, I'd say two
10:37:30 15 investments, in terms of injections of capital,
10:37:33 16 first in 1994 and then in 1997.

10:37:38 17 Q. What were the amounts of capital
10:37:41 18 invested in those years?

10:37:42 19 A. I believe it was 20 million in 1994
10:37:46 20 and an additional 10 million in 1997.

10:37:51 21 Q. Can you describe the circumstances
10:37:54 22 under which NYU came to invest with Ariel?

10:37:59 23 MR. LAUGHLIN: Objection, vague.

10:38:01 24 A. My understanding is that Ariel was
10:38:07 25 considered to be an appropriate investment for the

10:57:40 1 that you believe is inaccurate?

10:57:43 2 A. No.

10:57:45 3 MS. PRINC: Object to form.

10:57:46 4 A. No.

10:57:47 5 Q. Is there anything -- are there any
10:57:49 6 factual allegations in the affidavit that NYU has
10:57:52 7 reason to believe are inaccurate?

10:57:55 8 MS. PRINC: Object to form.

10:57:56 9 A. No.

10:58:10 10 Q. When did you personally first become
10:58:13 11 aware that NYU had an investment with the Ariel
10:58:16 12 Fund?

10:58:19 13 A. Shortly after I joined NYU.

10:58:25 14 Q. Do you recall the circumstances of
10:58:27 15 precisely when you learned about that investment?

10:58:32 16 A. No. It would have been part -- it's
10:58:35 17 part -- as a part of the portfolio I would have seen
10:58:38 18 it.

10:58:43 19 Q. Prior to 2008, so between the years
10:58:47 20 2005 and 2008 while you were employed at NYU, did
10:58:51 21 you personally, as part of your roles and
10:58:56 22 responsibilities, do any work in connection with
10:59:01 23 monitoring that investment?

10:59:05 24 A. Modest level.

10:59:08 25 Q. Can you describe in as much detail as

10:59:11 1 you can what you mean by a modest level.

10:59:15 2 A. I would have read Ezra's letters,
10:59:18 3 which were generally quarterly, and I recall
10:59:22 4 assisting our external auditors in -- across the
10:59:29 5 portfolio, but as a part of the portfolio, with some
10:59:32 6 additional follow-up research or follow-up data that
10:59:35 7 we wanted to request from the manager.

10:59:41 8 Q. Who was the external auditor?

10:59:44 9 A. I believe it was PWC.

10:59:47 10 Q. And you mentioned that you read
10:59:50 11 Ezra's letters. I understand that to mean
10:59:54 12 Mr. Merkin?

10:59:55 13 A. Yes.

10:59:57 14 Q. Okay.

15 A. Yes.

10:59:58 16 Q. And is my understanding correct that
11:00:00 17 you -- NYU received quarterly newsletters from
11:00:04 18 Mr. Merkin regarding the Ariel Fund?

11:00:06 19 A. Quarterly manager -- management
11:00:07 20 letters which included a breakdown of the portfolio,
11:00:11 21 how it's invested, summary of all of -- all of his
11:00:18 22 investment strategies which corresponded to the
11:00:23 23 table of investments.

11:00:31 24 Q. Did NYU receive any other regular
11:00:35 25 communications from Mr. Merkin or the Ariel Fund

11:00:38 1 regarding its investment?

11:00:39 2 A. Yes.

11:00:39 3 Q. What were those?

11:00:41 4 A. Financial statements.

11:00:42 5 Q. How frequently?

11:00:43 6 A. At least annually -- well, audited
11:00:46 7 financials would be delivered annually.

11:00:49 8 Q. Any others?

11:00:50 9 A. Possibly unaudited quarterly
11:00:52 10 financials. I haven't gone back to the files to
11:00:57 11 review that there -- but we should have received
11:01:01 12 them.

11:01:01 13 Q. Okay. Understood.

11:01:06 14 Any other regular communications?

11:01:11 15 A. Statements from Fortis, the
11:01:13 16 third-party administrator.

11:01:16 17 Q. Fortis being the third-party
11:01:18 18 administrator of the Ariel Fund?

11:01:20 19 A. Um-hum, right. They're the keeper of
11:01:22 20 the books and records -- or rather, the shareholder
11:01:25 21 registry. And so our state -- our account
11:01:27 22 statements would come from them.

11:01:34 23 Q. Anything else that you recall?

11:01:39 24 A. Not offhand.

11:01:44 25 Q. Okay. Did you -- between -- let me

11:03:21 1 to monitoring the investment in Ariel during that
11:03:25 2 three-year window.

11:03:27 3 A. Um-hum.

11:03:27 4 Q. Did anyone else at NYU monitor NYU's
11:03:31 5 investment with Ariel during that period?

11:03:35 6 A. In a similarly modest fashion, I
11:03:40 7 think Ray Oquendo, our director of investments at
11:03:43 8 the time, would have also reviewed documents such as
11:03:47 9 the financial -- such as our account statements or
11:03:50 10 the financials.

11:03:56 11 Q. Anyone else?

11:04:00 12 A. To my knowledge -- well, can you
11:04:03 13 clarify what you mean by monitor? Because in a
11:04:09 14 broad sense, of course, our --

11:04:11 15 Q. Right.

11:04:12 16 A. -- committee is responsible with
11:04:14 17 oversight of the entire portfolio, which one could
11:04:16 18 say is monitoring the --

11:04:17 19 Q. Right.

11:04:17 20 A. -- portfolio, and as a part of the
11:04:19 21 portfolio that would be included in periodic review
11:04:21 22 of returns, for example.

11:04:25 23 Q. Understood.

11:04:26 24 During that three-year window, was
11:04:29 25 anybody conducting any due diligence on the

11:04:30 1 investment?

11:04:31 2 MR. LAUGHLIN: Objection, vague.

11:04:32 3 MS. PRINC: Objection.

11:04:38 4 A. Ongoing due diligence?

11:04:39 5 Q. Yes.

11:04:40 6 A. So the -- so the -- yes, so the
11:04:41 7 conversations that Maury, the chief investment
11:04:45 8 officer at the time, would have had and our review
11:04:49 9 of all of the documents provided to us by the
11:04:51 10 manager.

11:05:10 11 Q. You stated that you personally met
11:05:12 12 with Mr. Merkin in October 2008; is that correct?

11:05:16 13 A. Yes.

11:05:19 14 Q. What were the circumstances of that
11:05:22 15 meeting?

11:05:23 16 A. In terms of why we met or --

11:05:25 17 Q. Correct. I'm just -- I'm trying to
11:05:28 18 gain an understanding of why did the meeting occur.

11:05:31 19 A. Well, it was October of 2008 and that
11:05:35 20 was a very dynamic time in the market.

11:05:38 21 Q. I remember.

11:05:39 22 A. Lehman Brothers had gone under.

11:05:42 23 There was a lot to -- to try to get your arms
11:05:45 24 around, and -- and so it was appropriate to meet
11:05:51 25 with Ezra as a manager in the NYU portfolio to -- to

11:07:32 1 Q. Had Mr. Maertens had in-person
11:07:35 2 meetings with Mr. Merkin prior to this date?

11:07:38 3 A. Probably.

11:07:41 4 Q. Any that you are specifically aware
11:07:43 5 of?

11:07:49 6 A. I'm aware of an in-person meeting
11:07:52 7 that took place in front of -- with our investment
11:07:54 8 committee, which would have involved Mr. Maertens.
11:08:00 9 As to other specific dates, I couldn't cite the
11:08:05 10 specific dates.

11:08:09 11 Q. The meeting with the investment
11:08:10 12 committee you just referenced, were you -- did you
11:08:13 13 participate in that meeting?

11:08:14 14 A. It was 2000.

11:08:15 15 Q. So it was prior to your employment?

11:08:17 16 A. It was prior to my joining NYU.

11:08:24 17 Q. Do you know what the purpose of that
11:08:25 18 meeting was with the investment committee?

11:08:35 19 A. It would have been part of normal --
11:08:39 20 normal practices of the investment committee, so
11:08:43 21 nothing out of the ordinary.

11:08:46 22 Q. Did Mr. Merkin give a presentation to
11:08:49 23 the investment committee?

11:08:51 24 A. I believe so.

11:09:01 25 Q. Can you tell me in as much detail as

11:12:36 1 two -- as two places we should -- we could consider
11:12:38 2 investing our capital.

11:12:39 3 He did mention a third group near the
11:12:42 4 end of the meeting as another, but that I don't
11:12:45 5 recall if it was in the context of a place that the
11:12:48 6 university might invest or if it was in the context
11:12:51 7 of someone else that he respects, and that's Lonnie
11:12:54 8 Steffens who he had respect for as a -- I suppose as
11:13:00 9 a money manager. Spring Mountain Capital, or
11:13:07 10 something like that.

11:13:08 11 All three of those were groups that
11:13:09 12 we really didn't have much knowledge of. I'd say of
11:13:11 13 the three, Millennium was the one that we had the
11:13:15 14 most familiarity with, just at least having heard
11:13:18 15 the name before.

11:13:20 16 Q. Okay. Prior to this meeting, had you
11:13:23 17 ever heard Bernie Madoff's name?

11:13:25 18 A. Prior to the October 23rd meeting?

11:13:27 19 Q. Correct.

11:13:28 20 A. No.

11:13:29 21 Q. Prior to that meeting, did you have
11:13:31 22 any familiarity at all with his investment advisory
11:13:35 23 business?

11:13:35 24 A. None.

11:13:40 25 Q. What did Mr. Merkin tell you about

11:13:42 1 Mr. Madoff in that meeting?

11:13:45 2 A. Well, he said he had a family trust
11:13:53 3 that was invested with Mr. Madoff, that he knew
11:14:00 4 Mr. Madoff quite well as a fellow member of the
11:14:03 5 board at Yeshiva, I believe it was, that he's an
11:14:14 6 exceptionally consistent performer, something like
11:14:18 7 30 quarters and -- or some extraordinarily long
11:14:21 8 period of time with no down quarters. So he was a
11:14:27 9 very stable performer. And, again, that he had a
11:14:30 10 family -- a family trust that was invested with --
11:14:34 11 with said individual, with Bernie Madoff, and that
11:14:40 12 he thought it was something that we might consider.

11:14:46 13 Q. Did you or Mr. Maertens respond?

11:14:51 14 A. Yes.

11:14:53 15 Q. Can we start with your response?

11:14:55 16 A. Sure. Well, I should --

11:14:57 17 Q. Or if there was one.

11:14:59 18 A. The prompt to the response. So
11:15:03 19 Mr. Merkin stylistically in the -- he can talk -- he
11:15:10 20 can expound for quite a while, so we were listening,
11:15:13 21 and -- and he volunteered near the end of his -- our
11:15:18 22 interaction, near the end of that description of
11:15:22 23 this opportunity, that the only significant negative
11:15:25 24 is that he prints his own tickets. He said, he
11:15:31 25 prints his own tickets.

11:15:33 1 And so I asked, to clarify, do you
11:15:37 2 mean he clears his own trades? To which he said,
11:15:41 3 yes, they're on his own stationery. And then I
11:15:44 4 clarified further, so there's no third-party
11:15:46 5 administration involved? And he -- he confirmed
11:15:50 6 that that was true.

11:15:53 7 And so, you know, being a maybe
11:16:02 8 impolite visitor in his office, I -- I then
11:16:08 9 volunteered for his edification, I suppose, that
11:16:11 10 while we were very appreciative of the
11:16:20 11 recommendation and respected his long relationship
11:16:22 12 with this individual, what he just had described to
11:16:26 13 us from an institutional standpoint would have been
11:16:30 14 a -- would be a non-starter, meaning the lack of a
11:16:34 15 third-party administrator. The idea that a person
11:16:39 16 clearing his own trades, right, it would just make
11:16:42 17 it -- it would make it unpalatable for us. So we
11:16:48 18 wouldn't pursue the opportunity.

11:16:51 19 Q. Why would clearing one's own trades
11:16:54 20 be -- make it an unpalatable opportunity?

11:16:57 21 A. Well, as I -- as I described, as I
11:17:03 22 have described to the university's auditors as an
11:17:07 23 anecdote, that's the kind of situation in which
11:17:11 24 fraud can occur.

11:17:14 25 Q. Can you explain why?

11:19:52 1

Q. Right.

11:19:53 2

A. Right. And it really was -- but

11:19:56 3

there's no question that Maury and I saw the problem

11:20:00 4

in that recommendation the same way and -- and very

11:20:05 5

clearly. So...

11:20:09 6

Q. Got it.

11:20:10 7

After you had -- after you expressed

11:20:13 8

your concern about Mr. Madoff to Mr. Merkin --

11:20:15 9

A. Yes.

11:20:15 10

Q. -- did Mr. Merkin respond to you?

11:20:19 11

MS. PRINC: Object to form.

11:20:22 12

A. That's to form. I can answer that?

11:20:27 13

Q. Yes.

11:20:28 14

A. So, he did not disclose that we had

11:20:32 15

exposure to this investment through Ariel Fund,

11:20:37 16

which is hard to believe.

11:20:40 17

Q. Why is that hard to believe?

11:20:46 18

A. Because it's so incongruous with the

11:20:49 19

fact pattern up till that -- up until that point.

11:20:51 20

Q. Meaning -- and this is my

11:20:54 21

understanding, correct me if I'm wrong -- Mr. Merkin

11:20:57 22

has said he understands the concerns of the

11:20:59 23

endowment as -- as making recommendations for

11:21:01 24

possible additional money managers for the -- in

11:21:06 25

which the endowment might place money; you've

12:02:17 1 Q. Okay. You write -- there's an
12:02:20 2 asterisk written onto the copy?

12:02:23 3 A. Um-hum.

12:02:23 4 Q. And next to it a statement that says,
12:02:25 5 "Again, I'm pretty shocked this fund was in Ariel's
12:02:29 6 portfolio given how we told him that we could never
12:02:32 7 invest in a fund like that. The guy was doing his
12:02:34 8 own marks from an institutional perspective."

12:02:38 9 A. Um-hum.

12:02:38 10 Q. Is this statement referring to the
12:02:40 11 October meeting with Mr. Merkin?

12:02:43 12 MS. PRINC: Object to form.

12:02:45 13 A. Yeah, yes. How we told him we could
12:02:49 14 never invest, that statement refers to our
12:02:52 15 interaction in the October meeting, yes.

12:02:54 16 Q. Right.

12:02:55 17 So just to be clear, where you say
12:02:58 18 "given how we told him," you're referring to
12:03:01 19 Mr. Merkin?

12:03:01 20 A. Him being Mr. Merkin.

12:03:02 21 Q. "That we could never invest in a fund
12:03:05 22 like that," the "we" being NYU?

12:03:09 23 A. Right.

12:03:10 24 Q. And "fund like that" referring to --

25 A. Madoff.

12:03:14 1 Q. -- a recommendation from Mr. Madoff?

12:03:16 2 Because Mr. Merkin indicated he
12:03:18 3 self-clears?

12:03:20 4 A. Correct.

12:03:37 5 Q. You mentioned that you had
12:03:39 6 anecdotally told PWC about your meeting with
12:03:45 7 Mr. Merkin. Can you elaborate on the -- on any of
12:03:51 8 the details of that discussion?

12:03:53 9 A. Sure. You would like me to?

12:03:56 10 Q. Yes.

11 A. Okay.

12:03:57 12 Q. So let me start you off: Did -- what
12:04:02 13 was the occasion -- was there an occasion -- was
12:04:06 14 there a particular reason why you were talking to
12:04:12 15 PWC at that time?

12:04:13 16 A. Yes.

12:04:14 17 Q. What was the reason?

12:04:15 18 A. PWC was conducting its annual meeting
12:04:18 19 with us to cover fraud and other -- it's a specific
12:04:24 20 meeting that they hold each year, and the topic is
12:04:27 21 fraud.

12:04:32 22 Q. Was this an in-person meeting?

12:04:34 23 A. Yes.

12:04:35 24 Q. In your offices?

12:04:36 25 A. Yes.

12:14:10 1 Q. I'm handing you what I will mark as
12:14:12 2 the Trustee's Exhibit 119.

12:14:21 3 (Exhibit Trustee 119 marked for
12:14:24 4 identification.)

12:14:25 5 BY MR. JACOBS:

12:14:25 6 Q. Do you recognize this?

12:14:27 7 A. My calendar.

12:14:28 8 Q. And is this your calendar indicating
12:14:34 9 a call or a meeting with Mr. Merkin on Tuesday,
12:14:37 10 December 16th, 2008?

12:14:39 11 A. Yes, a telephone call.

12:14:41 12 Q. Is this the call you just referred
12:14:44 13 to?

12:14:44 14 A. Yes.

12:14:49 15 Q. Okay. Can you describe for me in as
12:14:51 16 much detail as you can what was discussed on that
12:14:53 17 call.

12:14:57 18 A. Hum, I think Maury did much of the
12:15:03 19 talking and he expressed surprise, disappointment,
12:15:06 20 asked some clarifying questions. So it was a -- an
12:15:19 21 opportunity to speak to our manager who had just
12:15:22 22 delivered extremely disappointing news.

12:15:35 23 Q. Do you recall any additional specific
12:15:39 24 details about questions Mr. Maertens might have
12:15:45 25 asked Mr. Merkin?